

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

x

JONATHAN HARRIS,

Plaintiff,

-against-

CITY OF NEW YORK; Detective BRIAN TAYLOR,
Shield No. 4438; Police Officer NEIL MAGLIANO, Shield
No. 2766; Police Officer SEAN NOCE, Shield No. 31328;
Detective JUSTIN PARRIS, Shield No. 22965; Sergeant
WESLEY FRADERA, Shield No. 4246,

Defendants.

**DEFENDANTS'
STATEMENT OF
UNDISPUTED FACTS
PURSUANT TO LOCAL
CIVIL RULE 56.1**

15 CV 8456 (CM) (RLE)

Pursuant to Local Rule 56.1 of the Civil Rules of this Court, defendants City of New York, Detective Brian Taylor, Detective Neil Magliano, Sergeant Sean Noce, Detective Justin Parris and Sergeant Wesley Fradera submit the following statement of material facts as to which there is no genuine issue to be tried:

1. At approximately 11:36 p.m. on May 7, 2015, defendants Detective Brian Taylor, Detective Neil Magliano and Sergeant Sean Noce were called to a park in the vicinity of West 64th Street and West End Avenue in New York, New York to investigate a 911 call stating that a black male, approximately 5 feet 8 inches tall, wearing a "black hoody" and "black pants" was in a park behind the Amsterdam Houses with a gun in his waistband. Sprint Report, New York City Police Department ("Sprint Report") for May 7, 2015, Johnson Decl., Exhibit "C" at Bates Stamp No. DEF000084.

2. Plaintiff admits that on the evening of May 7, 2017 was inside the park located behind the Amsterdam Houses. Deposition of Jonathan Harris, dated May 18, 2016, ("Harris Dep.") annexed to the Declaration of Paul H. Johnson dated June 1, 2016 ("Johnson Decl."), Exhibit "B" at 41:8-18.

3. Plaintiff's arrest report stated plaintiff is African American and was wearing black sweatpants and a black jogging jacket and lists his height as 5 feet 9 inches tall. Arrest Report No. M15633672, for Jonathan Harris, ("Harris Arrest Rep."), Johnson Decl., Exhibit "D" at Bates stamp No. DEF000002.

4. At approximately 11:55 p.m. plaintiff was in the park the vicinity of 217 West 63rd Street when he was approached by a police officer. Harris Dep., Johnson Decl., Exhibit "B" at 46:9-11; Harris Arrest Rep., Johnson Decl., Exhibit "D" at Bates stamp No. DEF000001.

5. Detective Neil Magliano approached plaintiff because he appeared to match the description of the individual believed to be carrying a weapon. Deposition of Neil Magliano ("Magliano Dep."), taken on July 27, 2017, Johnson Decl., Exhibit "E" at 40:7-12.

6. As Detective Magliano approached plaintiff he saw an individual drop a jacket onto the ground which he believed belonged to plaintiff, Magliano Dep., Johnson Decl., Exhibit "E" at 40:19-21.

7. Sgt. Sean Noce picked up the jacket and found a scalpel inside the jacket. Magliano Dep., Johnson Decl., Exhibit "E" at 45:6-9. Deposition of Sean Noce, taken on July 18, 2017, Johnson Decl., Exhibit "F" at 41:13-22.

8. Plaintiff admits he was told by a police officer that the jacket where the scalpel was recovered from belonged to plaintiff. Harris Dep., Johnson Decl., Exhibit "B" at 49:20-22.

9. Plaintiff denied that the jacket belonged to him. Harris Dep., Johnson Decl., Exhibit "B" at 49:25.

10. The police officer then placed plaintiff in handcuffs. Harris Dep., Johnson Decl., Exhibit "B" at 51:9.

11. Detective Magliano recalls plaintiff informing him that he kept the scalpel for protection. Magliano Dep., Johnson Decl., Exhibit "C" at 61:19-22:62:16-17.

12. Detective Brian Taylor arrested plaintiff for possession of a dangerous cutting instrument based on the observations of Detective Magliano. Harris Arrest Rep., Johnson Decl., Exhibit "E" at Bates stamp No. DEF000001. Deposition of Brian Taylor ("Taylor Dep.") taken on July 14, 2017, Johnson Decl., Exhibit "G" at 17:31-21.

13. Detective Taylor relied on the observations of Detective Magliano to determine that plaintiff possessed a dangerous weapon. Declination of Prosecution, District Attorney of the County of New York, dated June 2, 2015, Johnson Decl., Exhibit "H" at Bates Stamp No. DEF000005. Taylor Dep., Johnson Decl., Exhibit "G" at 17:18-21.

14. Detective Taylor did not observe plaintiff's arrest. Taylor Dep., Johnson Decl., Exhibit "G" at 17:10-12.

15. Detective Justin Parris has no personal knowledge about the arrest of Jonathan Harris and did not observe his arrest. Declaration of Detective Justin Parris, dated August 24, 2017, Johnson Decl., Exhibit "I."

16. Sgt. Wesley Fradera did not observe plaintiff's arrest and has no personal knowledge about the arrest of Jonathan Harris. Declaration of Wesley Fradera, dated August 25, 2017, Johnson Decl., Exhibit "J."

17. Detective Justin Parris did not interact with plaintiff and has no personal knowledge regarding the arrest of Jonathan Harris. Declaration of Brian Parris, dated August 25, 2017, Exhibit "I."

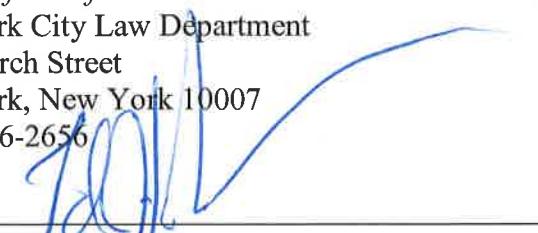
18. Detective Taylor issued plaintiff a desk appearance ticket for criminal possession of a weapon. Desk Appearance Ticket for Jonathan Harris, ("DAT"), Johnson Decl., Exhibit "L" at Bates stamp No. DEF000006.

19. The District Attorney for New York County declined to prosecute plaintiff. Declination of Prosecution, Johnson Decl., Exhibit "H" at Bates Stamp No. DEF000005.

20. The case against plaintiff was dropped before his arraignment. Taylor Dep., Johnson Decl., Exhibit "D" at 39:23-40:14. Letter from NYS Unified Court System, dated December 17, 2015, Johnson Decl., Exhibit "M" at Bates Stamp No. DEF000430. Taylor Dep., Johnson Decl., Exhibit "G" at 39:23-40:14.

Dated: August 30, 2017
New York, New York

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By: 

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Index No. 15 CV 8456 (CM)

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Due and timely service is hereby admitted. New York, New York , 2015 . . .

..... Esq.

Attorney for